

### REMARKS

The applicants appreciate the Examiner's thorough examination of the application and request reexamination and reconsideration of the application in view of the preceding amendments, the following remarks, and the telephone interview between the undersigned and the Examiner on May 9, 2005.

The Examiner rejects claim 25 under 35 U.S.C. §112, first paragraph, stating that “the limitation of the step system being foldable flat for storage is not disclosed in the specification and drawings”.

The applicants maintain that the specification discloses that the subject invention is foldable flat, see e.g. page 7, lines 1-3. To advance prosecution, however, the applicants have amended claim 25 as discussed below in connection with the *Lister* reference.

### THE REJECTIONS BASED ON U.S. Pat. No. 5,762,163 TO KAIN

The Examiner also rejects claims 1, 9, 14 and 24 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,762,163 to *Kain*. The Examiner also rejects claims 2-8 under 35 U.S.C. §103(a) as being unpatentable over *Kain* further in view of U.S. Pat. No. 3,593,821 to *Lister*. The Examiner further rejects claims 10 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Kain* in view of U.S. Pat. No. 4,440,264 to *Knoke et al.* The Examiner also rejects claim 11 as being unpatentable over *Kain* further in view of U.S. Pat. No. 5,577,574 to *Joseph*. The Examiner further rejects claim 12 as being unpatentable over *Kain*, stating that it would have been obvious to one of ordinary skill in the art to add steps made of chrome plated steel. The Examiner also rejects claim 13 under 35 U.S.C. §103(a) as being unpatentable over *Kain* in view of U.S. Pat. No. 4,485,892 to *Maloney et al.*

Previously, the applicants argued that independent claims 1 and 24, among others, were not anticipated by *Kain*. In the “Response to Arguments”, however, the Examiner states in pertinent part that:

[T]he *Kain* reference ...does disclose the bracket members -- at 57 as seen in figures 5-6, have a channel therein -- proximate 76 as seen in item 57 in figure 6. Further the *Kain* reference discloses the bracket members -- at 57 are in step 18 and are hingedly connected to the other steps -- at 14 and 16 via the hinged connection -- at 30 and 32 as seen in figures 1-2 ...

Further the *Kain* reference discloses the bracket members -- at 57, are hingedly connected to opposite sides of the steps -- at 14 and 16 as seen at items 30-36 in figures 1-2, where the hinged connections at items 30-36, are shown on each opposing sides of the steps.

*Kain* discloses “honeycomb reinforcement portions 57 on the bottom of the step 18.” See *Kain*, column 5, lines 54-56. The Examiner recognizes that the elements the Examiner calls “bracket members”, *Kain*’s elements 57, are in the step 18. Thus, *Kain* discloses one integral element, namely a step including reinforcement ribs which are an integral part of that same step.

Also according to the Examiner, *Kain*’s bracket members 57 are hingedly connected to the other steps -- at 14 and 16 via the hinged connection -- at 30 and 32. However, under such an analysis, honeycomb structure 57 -- which is an integral part of the step 18 -- would have to be “connected to” step 14, for example, because structure 57 is part of step 18 and step 18 in turn connects to link 32 which in turn connects to link 36 which in turn connects to step 14 (or because structure 57 is part of step 18 and step 18 in turn connects to link 30 and link 30 in turn connects to tube 24 which in turn connects to step 14). It is clear that *Kain*’s honeycomb reinforcement portions 57 on the bottom of the step 18 are not each hingedly connected directly to each of the other steps.

After a discussion with the Examiner on May 9, 2005 and suggestions from the Examiners, to advance prosecution the applicants' have amended claim 1 to recite "a pair of bracket members each hingedly connected directly to each of the steps". In other words, in sharp contrast to *Kain*, the applicants' claimed bracket members are indeed bracket members -- not reinforcement ribs on the underside of a step -- independent of the step but hingedly connected to the steps.

In order to find invalidity based on anticipation, not only must all of the elements of all the claims be found within a single prior art reference, but "[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the art." See e.g. Scripps Clinic v. Genentech, Inc., 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991). A person of ordinary skill in the art would view a vast difference between reinforcement ribs on the underside of a step as taught by *Kain*, and bracket members each hingedly connected directly to each of the steps as claimed by the applicants.

Reinforcement ribs which are part of the underside of one step, which step connects to links, which links in turn connect to other steps, do not equate to or suggest bracket members each hingedly connected directly to each of the steps. Thus, *Kain* does not disclose the applicants' claim 1 elements as arranged in the applicants' claim 1.

Thus, for the reasons above, *Kain* fails to disclose each and every element of the applicants' claim 1 arranged as in the claim.

Accordingly, claim 1, and claims 2-15 which depend directly or indirectly from claim 1, are in condition for allowance. Independent claim 24 includes at least the elements discussed above, and thus is also in condition for allowance for at least the reasons discussed above.

THE REJECTIONS BASED ON U.S. Pat. No. 3,593,821 TO *LISTER*

The Examiner also rejects claims 16, 18-21 and 23 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 3,593,821 to *Lister*. The Examiner further rejects claim 25 under 35 U.S.C. §103(a) as being unpatentable over *Lister* in view of *Kain*.

Previously, the applicants argued that independent claim 16, among others, were not anticipated by *Lister*. In the "Response to Arguments", however, the Examiner states in pertinent part that:

[T]he *Lister* reference ... does disclose a base member -- at 36 connected to the legs -- at 26. Applicant has not supplied a specific definition of the term "base" and it is deemed that the lower step portion [of *Lister*] -- at 14, 36, is a base member in that it is a base for the pad -- at 22 and for the linkage -- at 32,34, which connects the legs -- at 26.

The Examiner recognizes that elements 14, 36 disclosed by *Lister* are the lower step and lower step portion of *Lister*. The Examiner's position is that the lower step also serves as a base member for the non-slip pad 22 on the step and the linkage 32, 34, and that the applicants have not supplied a specific definition of the term "base".

The applicants' claimed base member connecting two spaced legs of an angled forward frame portion would be readily understood by those of ordinary skill in the art. As some evidence of the knowledge of those skilled in the art, the Examiner's primary reference *Kain* calls element 24c a "base" between two front (or second set of ) legs. See e.g. *Kain* column 4, lines 48-52 and Fig. 1. Also, the Examiner cites element 24c of *Kain* as a connecting base member. Thus, the applicants' specification and drawings include a clearly sufficient definition of base member.

The Examiner's additional basis for this rejection, namely, that skid pads on a step have a "base member" that is a step, is contrary to the knowledge of those skilled in the art and is contrary to the applicants' claim.

After a discussion with the Examiner on May 9, 2005 and suggestions from the Examiners, however, to advance prosecution the applicants' have amended independent claims 16 and 21 to recite that the base member is positioned at the lower end of the spaced legs. It is clear therefore that *Lister* does not disclose two spaced legs connected by a base member at the lower end of the spaced legs as claimed by the applicants, and thus does not anticipate the applicants' independent claims 16 and 21.

In addition, a base member (as claimed by the applicants and as understood by those of ordinary skill in the art) connecting the legs of *Lister* would destroy one of the main functions of *Lister*, namely, the ability to adjust the height of the system from the bottom. As noted by the applicants' previously, *Lister* states at column 3, lines 36-45:

Depending from each corner of the bottom tread 14 is a foot support member 26 as best seen in Fig. 4 which threadably receives a shank 28 to the bottom of which is secured a suitable enlarged foot 30 for engagement with the ground or other supporting surface. By this arrangement, each of the feet 30 can be individually vertically adjusted so that tread 14 can be placed level irrespective of any irregularity in the ground or other supporting surface at this point.

See also *Lister* Figs. 1 and 4.

In summary, *Lister* fails to disclose or suggest the applicants' claim 16 and 21. Claims 18-20 depend from directly or indirectly from claim 16, and claim 23 depends from claim 21.

Accordingly, claims 16, 18-21 and 23 are in condition for allowance for at least the reasons above.

Also, as noted above, claim 25 has been amended to delete the word "flat". Furthermore, in

light of the Examiner's prior rejection of this claim under *Lister*, the applicants' further note that claim 25 as presently amended recites a folding step system foldable for storage and transport comprising a foldable frame including a U-shaped angled forward member forming two spaced legs and a connecting base member and a U-shaped vertically disposed rearward member hinged to the forward member and including two spaced legs connected by a base member. Claim 25 further recites three wide steps each hingedly connected to the foldable frame, each step wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches, and each adjacent step offset by a distance greater than 7 inches, the top step being at least 24 inches high.

In contrast, *Lister* discloses a stair step unit with steps including feet 30 and foot support members 26, *inter alia*, for permanent placement adjacent mobile homes and the like. *Lister* fails to disclose the applicants' claimed U-shaped forward and rearward members. Thus, *Lister* does not disclose each and every element of the applicants' claim 25, and does not anticipate claim 25.

In fact, a U-shaped angled forward member forming two spaced legs and a connecting base member and a U-shaped vertically disposed rearward member hinged to the forward member and including two spaced legs connected by a base member, as claimed by the applicants and as understood by those of ordinary skill in the art, as well as the members taught by *Kain*, would destroy one of the main functions of *Lister*, namely, the ability to adjust the height of the system from the bottom. In this respect, see the discussion above in connection with claim 16.


Accordingly, the applicants request that the Examiner withdraw the rejection of claim 25 under 35 U.S.C. §112, and under §103(a) because, *inter alia*, *Kain* and *Lister* are not properly combinable. The elements taught by *Kain* (i.e. legs 24a, 24b, base 24c and plastic feet 26) would destroy the adjustability of *Lister*.

### CONCLUSION

Each of the Examiner's rejections has been addressed or traversed. Accordingly, it is respectfully submitted that the claims 1-16, 18-21 and 23-25 are in condition for allowance. Early and favorable action is respectfully requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts, (781) 890-5678.

Respectfully submitted,

  
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